

Overview

An effective criminal justice system depends upon a jail that has, at any given time, *one empty bed*. Without this, the system cannot meet its most fundamental objectives of protecting the community, holding offenders accountable, and preventing future crime.

The best array of alternatives to incarceration — and this report recommends many — is undermined when the community lacks an empty jail bed to provide a swift and certain response to program failure. Moreover, the *integrity* of a system is compromised when a jail is so overcrowded that serious defendants are not uniformly booked, adequately sentenced, or immediately sanctioned. At this time in Gallatin County, these basic system goals cannot be met.

The Gallatin County Jail is strained to the breaking point. In fact, the safety and security problems that attend the current overcrowding is so serious that a national jail expert has, just last month, recommended placing a 40-bed “cap” on the local jail — a thirty percent reduction in the average number of inmates now being held.

There is no disputing the fact that Gallatin County needs a new jail. However, the size of the facility it will ultimately need depends, in large part, upon the choices it makes today. The answer is not simply to lock up more people. The long-term strategy for managing the jail is one that requires improving system efficiency, supporting alternative sanctions, and expanding the local continuum of treatment programs.

A system has integrity only when it is able to ‘book’ those with serious charges, provide swift and certain sanctions for non-compliance, and ensure an available bed for sentencing. But in Gallatin County the majority of drunk-drivers are cited and released; sanctions are often served in neighboring county jails; and limited jail capacity has resulted in extreme reductions in sentence length, and forced the Sheriff to maintain a “waiting list” for some offenders to serve their time.

While the pressures on the jail are real, there are improvements that, if implemented, can ease overcrowding and optimize the utilization of the jail.

This study revealed that the jail has, on any given day, a relatively large percentage of inmates in pre-trial and ‘hold’ status; and it showed that the average processing time for felony defendants (from justice court arraignment to district court sentencing) is an extended 211 days. There is room for improvement. The system can improve *efficiency* by facilitating the release of appropriate defendants and by expediting the resolution of cases.

This study also demonstrated the need to improve the *effectiveness* of the system. In the study, nine percent of the individuals booked into jail had eleven or more

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prior arrests. This degree of re-cycling through the system reflects significant gaps in services. These include serious deficiencies in services for the mentally ill, and a lack of access to intensive alcohol and drug treatment.

This report outlines measures that, if implemented, will go a long way toward mitigating the demand for additional jail beds. These measures include comprehensive pre-trial screening and supervision; early prosecution resolution protocols; routine measures for the resolution of 'holds'; rigorous case processing time standards; on-going bail review; expanded diversion options; and a broader range of intermediate sanctions and treatment.

And, although not the focus of this study, the county is also advised to consider how the local juvenile justice system can be strengthened. We know that some of the best work that can be done to forestall future demand is to focus efforts on our youth. Interventions that are carefully targeted to high-risk juveniles can yield enormous returns.

However, even the most progressive approach will not eliminate the need for a new county jail. The best case scenario projects a need for a minimum of 131 jail beds by the year 2025.

The 131-bed scenario projects future need employing a 'static' approach: using rates of admission and an average length of stay that reflect current practices, not upward trends. But an examination of jail use patterns over the last thirteen years reveals that the only constant, is growth. Jail trend analysis from 1989 to 2002 shows increases not only in total numbers admitted to jail (admissions increased by almost fifty percent over this period), but in the *rate* of admissions and in the average length of stay.

I presented the projection of 131 jail beds as an absolute minimum number — and as starting point for discussion. However, the county is encouraged to plan for the future based on a projection that more closely reflects actual patterns of growth.

- A forecast that would roughly maintain today's average length of stay but reflects the upward trend in the admissions rate, yields a projected need of 144 jail beds by 2025.
- A forecast that would factor in moderate growth in the average length of stay, and reflect the upward trend in the admissions rate, yields a projected need of 177 jail beds by 2025.

I recommend taking as a target, the mid-point between these two forecasts, and designing a jail that can expand to meet a *160-bed* need in 2025. In any event, a 131-bed jail represents the absolute minimum size facility that should be planned.

In the planning for a 131-bed jail, consideration could be given to incorporating a minimum-security unit that can function as a work release facility. A Work Release program can help conserve jail beds by providing an alternative

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sentence for low risk offenders, and by making another sanction option available.

Building a jail with a work release unit presents the system with a challenge: to utilize viable alternatives to incarceration to forestall the need for 160 or more beds. For only through the creative use of alternatives, coupled with efforts to make the system more efficient, will the County be able to prolong the sufficiency of 131 beds.

The success of the endeavors over the next couple of years in effecting changes in the criminal justice process, and in implementing intermediate punishment sanctions, will determine if and when the jail will need to expand beyond 131 beds. This is the challenge.

In the end, neither jail beds nor programs alone can solve the current problem. Existing pressures on the jail are so great, that the same forecast analysis applied to existing demands, results in a recommended capacity of *95 jail beds today*.

This report outlines a plan for achieving a more effective system. To do so requires making changes, some of which would increase demand. One such recommendation would have all drunk-drivers booked into jail at the time of arrest (today only twenty percent are booked). Changes such as this will need to be offset by the recommended measures to make the system more efficient. There is hard work ahead.

In spite of the work ahead, Gallatin County has demonstrated the creativity and commitment it takes to effect change. Over the last several years the county has established a Criminal Justice Coordinating Council, developed a community corrections program, created a quality drug court, and laid the foundation for a comprehensive pre-trial services program. Just this year it has created a local public defenders office, received a grant to support re-entry services, and initiated long-term space and facility planning. Gallatin County is in a good position to take the next step!

This report, which is based on an analysis of defendants tracked through the local system; and a review of local criminal justice programs, policies and procedures, illuminates areas where an investment of time and funding can make a significant difference.

The answer to managing the jail population resides in a series of responses one cornerstone of which is a comprehensive pre-trial program.

Develop a Comprehensive Pre-trial Program

A comprehensive pre-trial program is an indispensable component of a criminal justice system; whose benefits are measured in community safety and reduced system costs. This report recommends the creation of a full-service pre-trial program.

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Pre-trial programs function as the gatekeeper of the system. Pre-trial program staff screen all individuals booked into the jail and present the court with verified information on each defendant. This information then serves as the basis for an objective assessment of risk, to guide decisions about pre-trial release and the imposition of pre-trial conditions. The program will then supervise, track and monitor each case until it is resolved.

Pre-trial programs enhance public safety and reduce the costs associated with missed court appearances.

A full-service pre-trial program can be one of the most significant factors in alleviating jail over-crowding.

Staff the Jail at an Adequate Level and Set a Population “Cap”

The Gallatin County Jail represents a crisis waiting to happen. On any given day, a jail constructed for 39 is routinely holding more than 60 inmates.

Last month, national jail consultant, Dennis Liebert, conducted a staffing analysis of the jail and concluded that, given the design flaws of the existing jail, a minimum of five additional officers are needed today to meet basic officer safety and inmate supervision standards. This must be a priority.

Expedite the Adjudication of Cases

The time from arraignment to sentencing should be shortened. The goal should be to dispose of cases within 90-days of arraignment. Toward this end, this report recommends a change from a two-tiered prosecution of felony cases to vertical prosecution; a change that by engaging the county attorney from the first appearance in justice court, would work to improve continuity and speed case resolution.

Furthermore, a series of early case resolution protocols are also being recommended. These include: creating a mechanism for exchanging discovery and taking pleas at the earliest stage; establishing a more rigorous continuance policy; setting time standards for plea negotiations, discovery, and overall case processing; and expediting the issuance of orders.

Setting ‘date certain’ times for cases is also important — creating certainty for victims and ensuring the timely resolution of cases.

And, to reduce the delay between disposition and sentencing, this report recommends the review of the uniform reliance on the pre-sentence report, with consideration given to using a short-form in specific cases as well as changing the mechanics of completing the investigation.

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Create a Full Continuum of Intermediate Sanctions

To promote a more cohesive approach to service delivery, this report recommends the creation of a new Office of Community Court Services.

This Office would unify, under the Court Administrator: Pre-trial Services, Community Corrections, Drug Court and other specialty court programs, and Re-entry Services. These programs offer great hope of effecting meaningful change. The research on effectiveness is compelling, demonstrating that a balance of supervision, sanctions, and treatment — directed toward the high-risk offender — can significantly reduce recidivism.

Drug Court

Given what we know about “what works,” programs like the Gallatin County Drug Court should be permanently funded and expanded. The local drug court is a strong program that, while under considerable financial stress, has proven its value; and it serves as a model for addressing other intractable issues: the drunk-driver, the mentally ill, and the offender charged with domestic violence.

While seeking county support for stable funding, the program can work to refine its services by expediting entry into treatment; broadening its target population; intensifying treatment; and conducting an outcome evaluation.

Alcohol and Drug Treatment

Outside of drug court, there is a lack of access to affordable alcohol and drug treatment. High-risk offenders with alcohol and drug problems need access to a continuum of services that includes detoxification, intensive outpatient treatment, short-term residential, in-custody treatment, and aftercare. Gallatin County should address gaps in its continuum of treatment services.

Moreover, in a system in which treatment is all fee-based, services for indigent high-risk addicts and sex offenders must be subsidized. The community cannot afford the consequences of offender failure because of an inability to purchase treatment.

Misdemeanor Supervision

The lack of misdemeanor supervision is a serious gap in the continuum of local sanctions. In general, this is an issue of system integrity. In particular for domestic violence cases it is an issue of victim safety.

In Montana, a person convicted of domestic violence, cannot be ordered to state probation supervision until their third offense, when the crime becomes a felony. For some victims, this is a dangerous waiting game.

However, while the State Department of Corrections limits their supervision to persons convicted of felony offenses, Montana Code allows local governments to establish court-based misdemeanor probation services (MCA 26-23-1003). Moreover, the Code indicates that domestic violence offenders will be ordered to pay the cost of this supervision.

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Fortunately, the foundation for developing local misdemeanor supervision has been laid. Last year, Gallatin County received federal grant funds that allowed it to sub-contract for nine months worth of domestic violence supervision services. The county should build upon this base and fund a county probation officer, positioned within the new Community Court Services Office.

The Mentally Ill

Another problem that merits serious attention is the chronic lack of services for the mentally ill. Absent a local crisis stabilization center, the jail often becomes the de facto mental health clinic. The lack of a comprehensive community response to this population impacts law enforcement, and places a burden on an already overwhelmed jail.

This report recommends the formation of a special committee to study the issues of the mentally ill who enter the criminal justice system, with special attention given to the establishment of a specialty court.

The Drunk Driver

Finally, the problem presented by the drunk-driver is a major issue for Gallatin County. The overcrowding in the jail has forced law enforcement officers to increasingly cite and release — instead of booking into jail — the person charged with a non-felony ‘Driving under the Influence’ offense.

The seriousness of this offense demands a uniform response in which all drunk-drivers are booked into jail and screened by pre-trial services. These cases should then be considered for a treatment-based diversion option modeled after drug court; and the county should develop a sheriff-operated work crew program to serve as another sanction option.

Finally, the county should develop a cognitive-based aftercare for those inmates returning to the county from the state’s in-custody “Watch” program.

Develop Specialty Courts for Specific Populations

As jurisdictions seek ways to respond to increasing workloads, more specialty courts are emerging. This movement has been inspired by the positive outcomes of drug courts, and by a growing belief that a more innovative response is needed for certain populations of offenders.

It is recommended that specialty courts be established in Gallatin County for three populations: the mentally ill, the drunk-driver, and the defendant charged with domestic violence.

Because of the nature of the offenses targeted these courts will need to be administered by Justice Court: the only court of limited jurisdiction with countywide jurisdiction. At the same time, this will require improved communication and coordination between the courts. To facilitate this, routine meetings between the courts are recommended.

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Strengthen Support of Victims

Gallatin County has a Victim Services Office of which it can be proud. This important service provides assistance and support to victims of person-to-person offenses, working closely with law enforcement and other agencies to make sure that victims are consulted, protected and informed. It is a central component of the criminal justice system.

This report recommends the expansion of this office, to allow the quality services that are provided to victims of threat and injury to be extended to victims of property crime. A full-service victim services program assists the victims of property crimes in documenting financial loss and in tracking the prosecution of their case. In this way, the system ensures that it is responsive to all victims, regardless of the nature of the offense.

Create an Information System for the 21st Century

A criminal justice system should be managed like a business; and no business can function without good information. However, the Gallatin County Jail is laboring under an antiquated information system that is not up to the tasks at hand.

At the larger level the county needs an information system that will allow the integration of criminal justice agencies; at the most basic level: 911, the courts, the county attorney, public defender, and the jail.

An information system should allow efficient case management while also serving as a management tool to support analysis and planning.